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Girish K. Vs. The Branch Manager

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Court : Kerala

Decided On : Mar-03-2015

Judge : Honourable Mr.Justice T.R.Ramachandran Nair

Appellant : Girish K.

Respondent : The Branch Manager

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR & THE HONOURABLE SMT. JUSTICE P.V.ASHA TUESDAY, THE3D DAY OF MARCH201512TH PHALGUNA, 1936 MACA.No. 2651 of 2010 ( ) ---------- AGAINST THE AWARD IN OPMV4472006 of MACT,KASARAGOD DATED3007-2010 APPELLANT(S)/PETITIONER: ---------- GIRISH K. S/O.VIJAYAN.T.K, KUNDAKUDIYAN HOUSE, VELLACHAL KODAKKAD POST, THRIKKARIPUR(VIA), KASARAGOD DISTRICT. BY ADV. SRI.M.V.AMARESAN RESPONDENT(S)/RESPONDENT NO.3: ---------- THE BRANCH MANAGER UNITED INDIA INSURANCE CO.LTD., GOKULESH SHOPPING CENTRE NEAR ST.STAND MODASSA-383 315. R1 BY ADV. SRI.P.V.JYOTHI PRASAD THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON0303-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: T.R. RAMACHANDRAN NAIR & P.V. ASHA, JJ.

- M.A.C.A.No.2651 OF2010- Dated this the 3rd day of March, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the claimant who suffered an accident at the young age of 20. He was a student at that point of time. He sustained injuries in the accident which occurred on 5.8.2005 at about 4.15 p.m. while riding a bicycle from Karivellur to Onakunnu. A lorry which was coming from the opposite direction bearing Reg. No.GJ9 5847 hit the bicycle and he was dragged on the road and sustained serious injuries. His both legs were crushed and blood and flesh came out due to the hit. Immediately he was taken to Pariyaram Medical College and was referred to Unity Health Complex, Mangalore. His right leg was amputated. Because of the injuries to his left leg, foot and thigh, which were crushed, he underwent cross leg scap. For several months he continued the treatment including dressing also. MACA26512010 2 2. The Tribunal, after considering various aspects, granted an amount of Rs.908,750/- as compensation with 7.5% interest, out of which Rs.7,50,000/- is towards treatment expenses.

3. We heard learned counsel for the appellant Shri M.V. Amaresan and learned counsel for the insurance company, Shri P.V. Jyothi Prasad.

4. Learned counsel for the appellant submitted that the appellant was a student studying for B.Tech. course at the time of accident. It is submitted that the compensation granted under various heads is totally inadequate. The total compensation claimed is Rs.30 Lakhs.

5. Before the Tribunal, various documents have been marked in evidence to prove the injuries sustained as well as the details of treatment. In Ext.A4 wound certificate issued by Unity Health Complex, the injuries noted are: "Crush injury right leg with fracture leg bones and amputation and crush injury left leg foot and thigh". He was admitted therein on 6.8.2005 and was discharged on 30.11.2005. Ext.A5 is the discharge summary which also details the treatment given to the appellant. He was treated as an inpatient for a long period of MACA26512010 3

118 days, because of the injuries suffered to both legs. In this appeal Annexure I series photographs has been produced, to show the present state of his two legs.

6. It is submitted by the learned counsel for the appellant that as far as the appellant is concerned, his future is bleak and the ailments which are experienced by him, require continued treatment for dressing, etc. It is therefore submitted that all these aspects should have been considered properly by the Tribunal. The schedule under which the Tribunal has granted amount shows the following: Head of claim Amount awarded (Rs) Medical and miscellaneous expenses 750000 Bystander expenses 20000 Transportation expenses 3000 Extra nourishment 10000 Damage to clothing 750 Pain and suffering 25000 Loss of amenities & convenience 100000 Total 908750 7. We find from the award of the Tribunal that a sum of Rs.3,000/- alone has been granted as transportation expenses. It is MACA26512010 4 clear that he had been under treatment for a long time in Mangalore including for subsequent reviews which required much expenses for transportation. As far as the said item is concerned, it will be only proper to enhance the compensation to Rs.15,000/-. Rs.10,000/- has been granted towards extra nourishment which we enhance to Rs.15,000/-. As far as the treatment expenses are concerned, Rs.7,50,000/- has been granted. It is seen that a total amount of Rs.1,05,850/- was claimed under bill Nos.53, 56 to 61 and 112 to 115 are for professional charges of the doctors, which were not allowed by the Tribunal for the main reason that other supporting evidence is required. It is explained by the learned counsel for the appellant that the same being professional charges paid to the doctors and being supported by bills, those amounts ought to have been granted by the Tribunal. We find force in the same. He had to take continuous treatment, and the amount claimed is only reasonable. Therefore, we grant an amount of Rs.1,05,850/- towards medical expenses.

8. For future treatment, nothing has been granted by the Tribunal, even though the claim is for Rs.5 lakhs. What is awarded by MACA26512010 5 the Tribunal towards bystander's expenses is Rs.20,000/-. He was under inpatient treatment for 118 days in Mangalore hospital. The accident is of the year 2005. Therefore, at the rate of Rs.200/- per day, he will be entitled for an amount of Rs.23,600/- as bystander's expenses which we grant.

9. As far as future treatment expenses also are concerned, we are of the view that the appellant's claim should have been considered reasonably by the Tribunal. As far as this item is concerned, because of the amputation he will have to face various ailments including those to the skin at the amputed part and the consequential difficulties to have a free movement, every now and then. Apart from the same, in the other leg also crush injuries were there. Learned counsel for the appellant further explained that he is using artificial leg which may require replacement at least during different intervals. We are of the view that the said argument is well founded. Such a claim is supportable especially in the light of the decision of the Apex Court in Ashvinbhai Jayantilal Modi v. Ramkaran Ramchandra Sharma and another {(2015) 2 SCC180. In Dinesh Singh v. Bajaj Allianz General MACA26512010 6 Insurance Company Ltd. and another {(2014) 9 SCC241 which is a case of personal injury wherein the claimant was having an Engineering degree, the apex Court paragraph 14 addressed a similar question. The necessity to change the artificial leg as and when required was noticed by the Apex Court therein and an amount of Rs.5,50,000/- was granted for future treatment and as cost for the artificial leg. Therefore, we find it reasonable to grant an amount of Rs.3 lakhs towards future treatment expenses and for the cost of the artificial leg, which will have to be replaced during definite intervals.

10. The amount awarded towards pain and suffering at Rs.25,000/- is totally inadequate, going by the injuries suffered by the appellant at his young age. We have noted that in Ext.A4 wound certificate one of the injuries described include crush injury to one leg resulting in damage to the muscles and serious injury to the other leg resulting in amputation. Therefore, the claim for Rs.1 lakh towards pain and suffering, going by the injuries sustained and treatment procedures undertaken, is reasonable and we grant the same. As far as the continuing permanent disability is concerned, what was sought for MACA26512010 7 is Rs.10 lakhs for loss of earning power. Ext.X1 certificate issued by Pariyaram Medical College, the physical impairment is shown as 81% for the right lower limb and 25% in relation to the left lower limb. As far as this aspect is concerned, it is submitted that the Tribunal has granted only Rs.1 lakh on the plea that he was not an earning member. He was a student in the 1st year of Engineering course in Aeronotical Engineering in Coimbatore. We find no reason to disbelieve it. The law

is well settled that even in the case of a student, for fixing adequate compensation the court can adopt a reasonable notional income. In this case evidently, the appellant would have discontinued his studies but for the accident, in the said college and obtained a comfortable job thereafter and even though there is no direct evidence regarding the probable monthly income, he would have earned a very good income after obtaining degree. It is only reasonable to fix a notional amount which we fix it at Rs.30,000/- annually. We will have to assess the loss of earning power, going by the disability sustained by him. It is a case of amputation just below the right knee. He will have to adjust his life so as to have a job suitable to the physical conditions, so that MACA26512010 8 the inconvenience suffered by him may not mar the future chances also. At any rate, we will be justified in taking it at 50% as whole body disability resulting in loss of earning power. Taking the multiplier of 18, the amount will be Rs.2,70,000/-.

11. The next item is the amount towards loss of conveniences and amenities in life. The enjoyment of life has been completely denied to the appellant at his young age. He will not be able to move about freely, travel freely, undertake any normal avocations, participate in sports or games, and will have to depend upon suitable modes of transport for continuing with his normal avocations, etc. The inconvenience will be too much. The same will continue throughout his life also. Therefore, we will be justified in granting an amount of Rs.2,50,000/- under the head loss of amenities and enjoyment in life.

12. The next item is regarding loss of marriage prospects. In this regard also, learned counsel for the appellant referred to the decision of the Apex Court in Dinesh Singh's case (supra) wherein in a similar case of an Engineering student, the Apex Court has granted an amount of Rs.1 lakh towards loss of marriage prospects. We also grant the MACA26512010 9 same amount. Lastly, it is submitted that there is a disfigurement also which is liable to be compensated. It will be only reasonable to grant amount of Rs.50000/- towards compensation for disfigurement also. Accordingly, the award passed by the Tribunal is modified as follows: Head of claim Amount awarded Modified award by the Tribunal passed by this (Rs) Court (Rs) Medical and miscellaneous expenses 750000 855850 Bystander expenses 20000 23600 Transportation expenses 3000 15000 Extra

nourishment 10000 15000 Damage to clothing 750 750 Pain and suffering 25000 100000 Loss of amenities & convenience 100000 250000 Disability, including loss of earning power 270000 Future treatment including expenses for purchase of artificial leg from time to time 300000 Loss of marriage prospects and disfiguration 150000 Total 908750 1980200 MACA26512010 10 (Rupees Nineteen lakhs eighty thousand and two hundred only) The enhanced amount will carry interest at the rate of 9% per annum from the date of petition and the insurance company is directed to deposit the entire amount of compensation less the amount already deposited before the Tribunal, within a period of three months. On such deposit being made, the claimant is permitted to withdraw the amount. The appeal is allowed as above. The parties will bear their costs in the appeal. (T.R. RAMACHANDRAN NAIR, JUDGE.) (P.V. ASHA, JUDGE.) kav/

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